IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5861 of 2000
with
SPECIAL CIVIL APPLICATION NOS. 5999/2000 and 6031/2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHAVIR APPARELS PROPERITY OF DHANESH B JAIN
Versus
DIRECTOR GENERAL, APPAREL EXPORT PROMOTION COUNCIL

Appearance:
MR P.M. THAKKAR WITH MR. AMAR P DAVE for Petitioner
MR. G.L. RAVAL WITH MR. K.S. JHAVERI for Respondent No. 1, 2, 3
NOTICE SERVED BY DS for respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/07/2000

ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, the petitioners who are exporters of garments have challenged circular No. Y2/14 dated

10.4.2000 (Annexure "C" to the petitions) issued by the Apparel Export Promotion Council (hereinafter referred to as "the Council" or "the respondent Council") and particularly clause 4 thereof in so far as it purports to enlarge the definition of the term `transfer' in the Export Policy regarding past performance entitlement quota. The petitioners have further prayed for a writ of mandamus to direct the respondent authorities to proceed on the basis that any shipment of readymade garments made by the petitioners in the year 1999 in connection with which the Bank realization certificates and other export documents being in the name of the petitioners, are not included as performance through third party shipment or third party negotiation.

2. In response to the notice issued by this Court, respondent Council has appeared and on its behalf affidavit in reply has been filed by it Additional Director Mr. H.K. Kanwal. Various contentions are raised. It is, however, not necessary to refer to all those contentions as this Court is inclined to uphold the preliminary objection raised on behalf of the respondent-Council that this Court has no territorial jurisdiction to entertain these petitions. It is contended that the impugned order was issued by the respondent-Council from Delhi and no cause of action or even a part of cause of action has arisen within the territorial jurisdiction of this Court.

In view of the aforesaid objection raised on behalf of the respondent-Council, the petitioners have moved an amendment today for inserting para 4.5 in the petitions in the following terms :-

" The petitioner engaged in the business of exports undertakes the export of various articles including ready made garments from his office at Ahmedabad. The proprietor of the petitioner concerned resides in Ahmedabad and all activities pertaining to the export business are therefore undertaken and controlled from Ahmedabad. The petitioner is a member of the respondent council and even for that purpose, the address of the petitioner concerned is of Ahmedabad. All the relevant correspondence including mailing of relevant circulars and notifications is undertaken by the respondent council to the address of Ahmedabad office of the petitioner. Therefore, for all purposes the petitioner has its place of business at Ahmedabad. Thus, this

Hon'ble Court has jurisdiction to entertain the petition and for granting the reliefs sought for by the petitioner."

3. The learned counsel for the petitioners has submitted that a part of cause of action for filing the present petitions has arisen within the territorial jurisdiction of this Court because the petitioners are having their offices at Ahmedabad and all activities pertaining to the export business are being undertaken and controlled by the petitioners from Ahmedabad. The petitioners are the members of the respondent-Council and all the relevant correspondence including mailing of relevant circulars and notifications is undertaken by the respondent-Council at the Ahmedabad address of the petitioners. In support of his contention that this Court has territorial jurisdiction, the learned counsel for the petitioners has relied on the following authorities: -

1. 1988(1) GLR 481
2. 1999(1) GLR 275
3. 1989(4) ELT (3) Bombay

4. On the other hand, Mr Raval, learned counsel for the respondent-Council has submitted that merely because the petitioners are residing within the territorial jurisdiction of this Court, it does not create any cause of action for the purpose of filing these petitions. The learned counsel has placed reliance on the decisions in AIR 1996 SC 3461, AIR 1987 SC 57, 1994 (4) SCC 711 and 1986 SC 649.

5. Before considering the rival contentions, it will be useful to refer to the provisions of clauses (1) and (2) of Article 226 of the Constitution of India which read as under :-

"226. Power of High Courts to issued certain writs - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto or certiorari, or any of them, for the enforcement of any of the rights conferred by

Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Governments, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

6. The crucial question is whether it can be said that by the petitioners carrying on their business at Ahmedabad, any part of the cause of action has arisen. Now it is well settled that a cause of action is that bundle or basket of facts which the petitioner must prove in order to succeed in getting the reliefs from the Court, assuming the facts alleged by the petitioner to be true. The principal contention of the learned counsel for the petitioners is that since the circular impugned in these petitions was received by the petitioners at Ahmedabad and since the effect of that circular will fall on the petitioners at Ahmedabad, it can be said that a part of the cause of action has arisen within the territorial jurisdiction of this Court. Strong reliance is placed by the learned counsel for the petitioners on the decision of this court in Modern Food Industries vs. M.D. Juvekar, 1988(1) GLR 481.

"Wherein the Court held that where an order of dismissal or termination of services is challenged, a part of the cause of action arises at the place where the order of termination of the service is communicated to the concerned employee. Therefore the High Court within whose territorial jurisdiction the impugned order is communicated to the employee has jurisdiction to entertain the petition."

7. It is required to be noted that in the aforesaid cases the challenge was levelled against an order of dismissal. The Courts held that it is obvious that unless an order of dismissal is communicated to the concerned employee, it cannot be given effect for the simple reason that the concerned employee will continue to discharge his duties and functions unless he has been informed that his services are dispensed with. It was further observed that even after an order of dismissal is

passed by the competent authority but before it is communicated, the competent authority may on second thought revise its decision and refuse to communicate the order of dismissal to the concerned employee. Therefore, even though theoretically the competent authority can be said to have passed the order of dismissal, it does not become effective until it is communicated to the concerned employee resulting in the dispensation of his service. Now in the facts of the instant case, what is challenged is the circular dated 10.4.2000 issued by the Council for calculation of the past performance entitlement and it does not depend upon the communication of the same to the petitioners. Moreover, in the facts of the case in Modern Food Industries, the Court relied not merely on the factum of service of order of dismissal on the employee at Ahmedabad, but the Court also noted that the Ahmedabad Unit of the Company was directed to pay 90 days' notice pay to the employee. Therefore, the employee was entitled to move this Court for an appropriate relief necessitated on the communication of the impugned order.

8. Similarly, in the decision of a Division Bench of this Court in Securities & Exchange Board of India vs. Alka Synthetics Ltd., 1999(1) GLR 275, an order by the SEBI at Bombay was challenged and the Court overruled the preliminary objection about the territorial jurisdiction of this Court on the ground that apart from the fact that the two petitioner Companies in question were Ahmedabad based Companies, there was no dispute that the investigation as ordered by the SEBI in the affairs of buying and selling and dealing with shares was carried out at Ahmedabad which was the bedrock of the action and the order of the authorities by which the petitioners were aggrieved. As stated above, in the instant case what is challenged in the petitions is the circular issued by the respondent-Council from Delhi and it is difficult to accept the contention that merely because the effect of the circular will fall on the petitioners carrying on their business at Ahmedabad, the petitioners will be entitled to approach this Court.

9. In this connection, it will be relevant to refer to the decision of the Apex Court in Oil & Natural Gas Commission vs. Utpal Kumar Basu, (1994) 4 SCC 711. The Apex Court examined the controversy about territorial jurisdiction in the context of the following facts :-

The ONGC issued an advertisement inviting tenders at New Delhi. The tenders were to be scrutinised at New Delhi and the final decision whether or not to confer the

contract to the tenderers was also to be taken at New Delhi. The execution of the contract was to be carried out at Hajira in Gujarat. The respondent in that case approached the Calcutta High Court for challenging the tender process on the ground that the petitioner read the advertisement at Calcutta, submitted the offer from Calcutta, made representations from Calcutta and sent fax messages from Calcutta and received reply thereto at Calcutta.

In spite of this factual position, the Apex Court did not uphold the contention of the petitioner that a part of the cause of action had arisen at Calcutta. The Court also held that these facts could not be treated as constituting any part of the cause of action. While upholding the claim of the ONGC that the Calcutta High Court had no territorial jurisdiction to entertain the petition and, therefore, setting aside the judgment under appeal the Apex Court further made the following observations :-

"Notwithstanding the strong observations made by the Supreme Court time and again, it is distressing that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Court of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. The image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. It is hoped that another occasion to deal with such a situation will not arise"

(emphasis supplied)

10. In view of the aforesaid clear pronouncement that

mere residence or place of business of the petitioner within the State does not confer a territorial jurisdiction on the High Court of that State, this Court has no hesitation in upholding the preliminary objection raised by Mr Raval, learned counsel for the respondent-Council that these petitions cannot be entertained as this Court has no territorial jurisdiction to entertain these petitions.

11. The petitions are, therefore, summarily dismissed only on the ground that this Court has no territorial jurisdiction to entertain these petitions.

Notice is discharged with costs.

12. Even while dismissing the petitions, the Court would like to observe that since the petitioners had filed these petitions in June, 2000 well before the expiry of the time limit for the petitioners to make declarations under the past performance entitlement scheme in terms of the circular dated 10.4.2000, and that the petitioners were effectively prosecuting these petitions for challenging that circular which challenge has not been entertained by this Court only on the ground of lack of territorial jurisdiction, it would be just and proper to observe that respondent No.1-Apparel Export Promotion Council shall accept the petitioners' declarations under the aforesaid scheme if they are filed latest by 14.7.2000.

July 4, 2000 (M.S. Shah, J.)
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